

11. MD PRIMER/MUT. What is the reason for needing that

1 although it didn't necessarily put WYLR's caller out. But it  
2 put a document in the file. The problem was it didn't have  
3 any programs for the FM station to list in each quarter. But  
4 the rule -- you're not violating the rule if you put a blank  
5 piece of paper in the file. And that's what I submit is what  
6 they were doing because --

7 CHAIRMAN MARINO: I, I think I misheard what you said.

8 MR. TILLOTSON: They were putting in effect a blank  
9 piece of paper in the file every quarter as to the FM station.  
10 They put something in the file. They put an issues programs  
11 list in the file which the rule required them to do. The list  
12 showed programs only on the AM station. But my view is that  
13 that was also -- you can't fault them for not putting the  
14 piece of paper in the file.

15 MS. ALLISON: His time's up.

16 CHAIRMAN MARINO: Now just take a minute to sum up and  
17 respond on the basic qualification issue, what the judge  
18 did -- the Bureau has told us what they think the judge did  
19 wrong in resolving that issue. Just take a minute to say  
20 something nice about the initial decision.

21 MR. TILLOTSON: Well, I --

22 CHAIRMAN MARINO: So we have a balanced record on it

1 evidence. He considered what little bit was there. He looked  
2 at the findings that Judge Kuhlmann had made under the issues  
3 in the Skidelsky case. He also looked at what he observed,  
4 the Borgos affidavit and other aspects of the unreliability of  
5 the material in the case in front of him and concluded based  
6 on the Skidelsky case and the record as a whole that this  
7 licensee cannot be trusted to be truthful to the Commission,  
8 and therefore it's not entitled to the continuous licensee --

9 CHAIRMAN MARINO: Okay. That's -- thank you.

10 MR. TILLOTSON: -- of this radio station. And I  
11 believe that you -- based on the Skidelsky record and the  
12 record in this case, you could reach no other rational  
13 conclusion on that point.

14 CHAIRMAN MARINO: Thank you.

15 MR. BLUMENTHAL: Okay.

16 CHAIRMAN MARINO: We're going to take a 5 minute  
17 recess, and then we'll come back for rebuttal. And each party  
18 will have -- each remaining party will have 5 minutes for  
19 rebuttal.

20 (Whereupon, a short recess was taken.)

21 CHAIRMAN MARINO: Mr. Lynch, you want to begin. And  
22 rebuttal gives you the opportunity to respond to the points  
23 that Mr. Tillotson made. Any points that he made that --

24 MS. GREENE: Mr. Schonman.

25 CHAIRMAN MARINO: -- and Mr. Schonman too, of course.

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1           MR. LYNCH: After 3 years, I am so sick and tired of  
2 standing in this building being lied about. The logs  
3 represented my programming. I've testified to the opposite of  
4 that. Mr. Tillotson understands that. He knows it. I'm  
5 sorry, that's not true.

6           The Borgos notations aren't parenthetical. Look at  
7 this sheet of paper. Of course they're parenthetical.  
8 They're in there in my handwriting on four of these pages.

9           MR. BLUMENTHAL: Mr. Lynch --

10          MR. LYNCH: Your Honor.

11          MR. BLUMENTHAL: -- I'm going to have to ask you to  
12 speak up, because the recorder is not --

13          CHAIRMAN MARINO: Picking it up.

14          MR. LYNCH: The testimony of my two witnesses  
15 previously put down didn't corroborate my Exhibit 6. You take  
16 page by page of my Exhibit 6, look at it, look at their  
17 testimony. That's another lie. Excuse me.

18          There's no explanation of Tri-County Notebook. My Tri-  
19 County Notebook WYLR --

20          CHAIRMAN MARINO: Is it 30 seconds or 15 seconds?

21          MR. LYNCH: It varies. We get in --

22          CHAIRMAN MARINO: What did you, what did you represent  
23 that it was, Mr. Lynch?

24          MR. LYNCH: One hour per week. And I forget the  
25 mathematics. I believe I worked at the, at the 15 second

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1 level and just multiply it out. It is -- you understand  
2 radio. You, you start talking and ad-libbing about something,  
3 and you're in an image type of rock station, you can talk  
4 about this for a minute. You can talk about it for 2 minutes.  
5 You can talk about it for longer than that.

6 And if you're really close to an event and you want --  
7 like last week we had 1,000 people show up to march and we  
8 raised 50 grand, helped raised 50 grand. You know, you talk  
9 about it like a son-of-a-gun because it's to your own benefit.  
10 The more people that show up and the more money raised, the  
11 better for you. But there's no description of Tri-County  
12 Notebook. A lie. I'm sorry. Trivial issues --

13 MR. BLUMENTHAL: Where is the description of --

14 MR. LYNCH: Exhibit 6, page 15, top of the page.

15 CHAIRMAN MARINO: All right.

16 MR. BLUMENTHAL: Exhibit 6.

17 MR. LYNCH: Excuse me, it's 30 seconds that we worked  
18 about. That is a fair representation, as fair as I can make  
19 it, as accurate as I can make it.

20 CHAIRMAN MARINO: But then the judge ends up finding  
21 that it's 15 seconds. How did he, how did he find that it was  
22 15 seconds? It's, it's a little thing but --

23 MR. LYNCH: I read that decision. I have no idea how  
24 he found half this stuff. The idea, one page of Borgos, one  
25 page of Borgos with the stupidest notes out there. Most --

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1 you know, I'm bright enough where if I wanted to forge  
2 something I'd at least type it and xerox the bottom.

3 CHAIRMAN MARINO: Well, Mr., Mr. --

4 MR. LYNCH: I have no idea --

5 CHAIRMAN MARINO: -- in fairness to the judge, that's  
6 what you said about Judge Kuhlmann's findings too.

7 MR. LYNCH: I honestly -- I have run an honest radio  
8 station for over twenty some odd years. It's about a third of  
9 a century worth of my family being into it. I just don't all  
10 of a sudden turn into a gargoyle just because I'm, again it's  
11 Mr. Tillotson's term, lying, cheating and stealing to  
12 everybody. I don't understand how they came up with this.

13 I'd like to simplify -- am I a liar, a cheat and a  
14 thief? If there's one piece of evidence on the record that  
15 says I have absolutely purposely lied to this Commission, then  
16 take my radio station away from me. Please do. That's the  
17 law. There isn't.

18 There are innuendos. There are basic lies about me  
19 from the day I walked down to the FCC. And they have been on  
20 challenge. I will pick them out. I have picked them out with  
21 my exceptions categorically. Just blatant.

22 MR. BLUMENTHAL: You sound like Clarence Thomas. You  
23 say this is a high-tech lynching.

24 MR. LYNCH: This --

25 MR. BLUMENTHAL: No pun intended.

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1           MR. LYNCH: This is one of the most -- I, I have been  
2 in bureaucracy in Vietnam. I have been in bureaucracy between  
3 now and, and then. I -- this, this is -- I would much rather  
4 have been in Vietnam for this last year. This is a --  
5 horrible. I have never seen a worse convolution of justice,  
6 of, of the ministration of bureaucracy in my life. It is  
7 paperwork. The evidence is paperwork.

8           There is a bottom line question that I would like to  
9 get answered. Who is going to serve Glens Falls better? Who  
10 is going to serve Glens Falls better? Somebody who has not  
11 even put his face into Queensbury or Glens Falls or this court  
12 or somebody who's been there?

13           CHAIRMAN MARINO: Mr., Mr. Lynch --

14           MR. LYNCH: That --

15           CHAIRMAN MARINO: -- Mr. Lynch, unfortunately the FCC  
16 went all the way up to the Supreme Court to establish the  
17 proposition, and it did it very early in the game, that if a  
18 broadcaster comes in and tells us that something is 30 seconds  
19 and in fact it was 15 seconds and the judge so finds that  
20 could, that could be the end of your license.

21           MR. BLUMENTHAL: Well, I think that we're focusing on  
22 that a little bit narrowly. I do sympathize with you in this  
23 sense, Mr. Lynch, just as I sympathize with every taxpayer  
24 that becomes embroiled with the bureaucracy and has to fill  
25 out forms and has to prove things whether it's the FCC, the

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1 IRS, OSHA, NEPA.

2           Nonetheless, as you well know having been in  
3 broadcasting all this time, we're bound by the Communications  
4 Act. It's an act of Congress. Section 309 permits you to be  
5 challenged at every license renewal term and even before then.  
6 The courts have laid down certain guidelines that we must  
7 follow in these things. And so what we must do to the best of  
8 our ability with the flag to our right is apply those  
9 principles fairly and honestly.

10           One thing you can be sure of, I hope, is that this  
11 Board will go over the record honestly as the Bureau will tell  
12 you. You can see them making nasty faces back there as we  
13 question them. This Board very frequently disagrees with the  
14 Mass Media Bureau and is not afraid to say so. This Board  
15 very frequently disagrees with administrative law judges and  
16 is not afraid to say so. Commission frequently disagrees with  
17 us, and the courts frequently disagree with the Commission.

18           It may be jaundice versus jaundice, and Dickens may  
19 have had it right. But if you read Franz Kafka, you're the  
20 one who came to us in the Skidelsky case. And you're the one  
21 that sought the law. It didn't reach out and seek you. And  
22 once having sought the forum, you're entitled to a fair  
23 adjudication by that forum. But you can't complain that  
24 you're in the forum.

25           MR. LYNCH: Your Honor, I am not complaining that I

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1 am --

2 MR. BLUMENTHAL: Okay.

3 MR. LYNCH: -- in the forum. You have blackened your  
4 law. You have whitened your law. And then there's a wide,  
5 wide parameter of gray. You know, when you talk about result  
6 orientated --

7 MR. BLUMENTHAL: Just my hair. I, I -- my writings --

8 MR. LYNCH: Seems to have extra the last few years.

9 MS. ALLISON: His time's up.

10 MR. BLUMENTHAL: My writing is purple.

11 CHAIRMAN MARINO: Okay. One minute to sum up. Because  
12 we have given you the 5, more than 5 minutes.

13 MR. LYNCH: I wish you would look at who will serve the  
14 community better. If you look at the facts of this matter if  
15 you find one piece of hard evidence I have ever purposely lied  
16 to this Commission, you can have my license. I have not. I  
17 would not. The various rules in broadcasting you can  
18 understand it and you will sit there and look the FCC in the  
19 eyes and lie. I grew up in broadcasting. My career is, my  
20 career is in broadcasting. And I have not lied to this  
21 Commission ever. Ever.

22 MR. BLUMENTHAL: Thank you, Mr. Lynch.

23 MR. LYNCH: Thank you, Your Honors.

24 MR. BLUMENTHAL: Let me just say that even without



1 CHAIRMAN MARINO: That's why he was asking you to keep  
2 your voice --

3 MR. BLUMENTHAL: And I don't think anybody could have  
4 better presented your case. And I mean no aspersion on my  
5 750,000 colleagues with law degrees. They sometimes  
6 complicate things more than they need be.

7 CHAIRMAN MARINO: Thank you. Thank you very much, Mr.  
8 Lynch.

9 MR. LYNCH: Thank you for your comments --

10 MR. BLUMENTHAL: Nobody else gets rebuttal.

11 MS. GREENE: Mr. Schonman.

12 CHAIRMAN MARINO: Bureau.

13 MR. BLUMENTHAL: Why? They are on the side of -- or,  
14 or did they have acceptance?

15 CHAIRMAN MARINO: No, they accepted. They accepted.

16 MR. BLUMENTHAL: Oh.

17 CHAIRMAN MARINO: Yeah, we'll -- keep, keep it brief.  
18 Because we're running out of time now. If you can.

19 MR. SCHONMAN: I will do my best. Several things I  
20 just want to point out. There was some discussion earlier  
21 with Mr. Tillotson about ascertainment and whether there was  
22 or was not ascertainment by Normandy in the community. And I  
23 would note at paragraph 24 of the ID the judge writes, "Brandt  
24 concedes that Normandy did in fact interview community  
25 leaders, members of the general public and various groups and

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1 agencies in the Glens Falls area for ascertainment purposes."

2 End of, end of that topic.

3 We have a decision in Queensbury which was adverse to  
4 Normandy. The issue in this case is what effect does that  
5 determination have on the renewal application? The misconduct  
6 in the Queensbury proceeding was isolated. That is the  
7 actions which led to the adverse character conclusions in  
8 Queensbury were confined to that case.

9 There is no evidence in this renewal case of  
10 exaggerated claims, no evidence of a lack of candor, no  
11 evidence of an intent to deceive, no evidence of false  
12 certifications. There is no evidence of any misconduct in the  
13 operation of WYLR and no evidence that Normandy willfully  
14 failed to comply with any Commission rules.

15 Furthermore, Mr. Lynch, who has operated WYLR for more  
16 than 20 years, has served on numerous community organizations  
17 with distinction and is a decorated Vietnam Veteran.

18 In sum, there is not the slightest suggestion -- let me  
19 say that again. There is not the slightest suggestion that  
20 the wrongdoing in the Queensbury case has developed into some  
21 ominous, pervasive pattern of wrongdoing --

22 MR. BLUMENTHAL: All right.

23 MR. SCHONMAN: -- that warrants --

24 MR. BLUMENTHAL: Mr. Schonman --

25 MR. SCHONMAN: -- the equivalent of the death penalty

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1 here.

2 MR. BLUMENTHAL: Mr. Schonman, you read, you read very  
3 well.

4 MR. SCHONMAN: Thank you.

5 MR. BLUMENTHAL: I'm going to give you your final  
6 question here. It is important as you well know, Queensbury  
7 aside, assuming arguendo we agree with your thesis that Mr.  
8 Lynch's actions in the Queensbury case would not disqualify  
9 him here. We then have before us a conventional, in your  
10 view, comparative renewal case.

11 Pursuant to the court's instruction in Central Florida  
12 and based on the record evidence that you have examined, would  
13 you say that the FM station performed minimally, averagely,  
14 superlatively? And what strength renewal expectancy are we to  
15 give it vis a vis Brandt?

16 MR. SCHONMAN: We've been down this road before, Board  
17 Member Blumenthal. It is the Bureau's position that Normandy  
18 is entitled to a renewal expectancy.

19 MR. BLUMENTHAL: Of what strength, Mr. Schonman? Do  
20 you -- if you want to evade and you are not prepared to say  
21 so, I want you to candidly look me in the eye and say we  
22 cannot grade this or weigh the strength of that renewal  
23 expectancy. We simply say they're entitled to renewal  
24 expectancy. Is that your answer?

25 MR. SCHONMAN: I am looking you straight in the eye,

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1 and the Bureau is not taking a position on the relative  
2 strength of renewal expectancy.

3 MR. BLUMENTHAL: Okay.

4 MR. SCHONMAN: It is the Bureau's position that  
5 Normandy is entitled to a renewal expectancy. And I'll tell  
6 you why.

7 MS. GREENE: Just for a moment. I hate to belabor the  
8 point. But when you say that you're not taking a position,  
9 are you at least taking a position as between minimal and  
10 something greater? And I ask you that question because if a  
11 renewal expectancy is only minimal, it doesn't really weigh in  
12 this case.

13 MR. SCHONMAN: Let me explain why the Bureau thinks  
14 that Normandy is entitled to a renewal expectancy in this  
15 case. There was discussion earlier about whether Normandy had  
16 provided issue responsive programming. Now we know from the  
17 record that Normandy ascertained the community's needs.  
18 Brandt has, has accepted that. The ID acknowledges that.  
19 There was unrebutted testimony that, that Normandy went out  
20 and ascertained the community needs.

21 Item two, did Normandy provide issue responsive  
22 programming. Now I said earlier that during examination of  
23 Mr. Lynch that the Bureau asked Mr. Lynch about each program  
24 was this in response to --

25 MR. BLUMENTHAL: Mr. Schonman, can you --

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1 MR. SCHONMAN: Can I, can I say --

2 MR. BLUMENTHAL: No, I want you to answer this  
3 question, Mr. Schonman. We have read your brief, and I have  
4 heard your speech. I want to know why the Bureau in this case  
5 asks or tells us that it won't assign any weight to the  
6 renewal expectancy when in the very last comparative renewal  
7 case we had, it was the Mass Media Bureau itself that came in  
8 and asked that the strong renewal expectancy that was awarded

1 case is judged on a case by case basis.

2 MR. BLUMENTHAL: Yes. This is a case as was Fox.

3 MR. SCHONMAN: In this case, based on the evidence  
4 before us, the Bureau concludes that the licensee is entitled  
5 to a renewal expectancy. The facts before us do not lend  
6 itself, do not lend itself to enable the Bureau to come to a  
7 conclusion as to the relative level. In this case the Bureau  
8 will not do that.

9 But I can tell you on what basis the Bureau is able to  
10 stress that --

11 MR. BLUMENTHAL: Why don't the facts lend themselves to  
12 it? We have all the facts on the record that we have in every  
13 comparative review case.

14 CHAIRMAN MARINO: How are we going to do it? You're  
15 the experts.

16 MR. BLUMENTHAL: We've got to do it. And you know the  
17 record and you were there.

18 CHAIRMAN MARINO: You're the expert Bureau. And if you  
19 can't do it, how are we going to do it?

1 question. I've answered it the best way I can.

2 MR. BLUMENTHAL: I've noticed that.

3 MR. SCHONMAN: I've given, I've given you my answer.

4 MR. BLUMENTHAL: All right.

5 MR. SCHONMAN: I've, I've tried to present myself to  
6 this Board in the only way I know how giving this Board the  
7 facts and the law as we see it. I've also given this Board a  
8 lot of respect in my presentation.

9 MR. BLUMENTHAL: You've also, I take it now, finally  
10 said we -- the Bureau is not in a position for reasons we are  
11 not privy to to tell you whether we think this is a minimal  
12 performer renewal expectancy, average or meritorious. And  
13 that is the final position of the Bureau.

14 We have given you the same respect, Mr. Schonman,  
15 because you are the most familiar with the record. The  
16 position of the Commission staff --

17 MR. SCHONMAN: I am no more familiar than you are. The  
18 transcripts are before you, sir. All the pleadings are before  
19 you --

20 CHAIRMAN MARINO: Thank you. Okay. I think --

21 MR. SCHONMAN: -- so I am no more familiar with the  
22 record than you are.

23 CHAIRMAN MARINO: Thank you, Mr. Schonman. I think  
24 we've, we've accomplished all we can accomplish this morning.  
25 Thank you very much.

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1 (Whereupon, at 12:20 p.m., the hearing was adjourned.)  
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APPLICATION OF NORMANDY BROADCASTING, et al

**Name**

MM DOCKET NO. 92-6

**Docket No.**

WASHINGTON, D.C.

**Place**

APRIL 30, 1993

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 716 through 806, inclusive, are the true, accurate and complete transcript prepared from the reporting by BARBARA J. LORD in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

May 7, 1993

**Date**

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Karen Ehatt, Transcriber  
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May 10, 1993

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